IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS No.13266 & 13667 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINOR PANKIL BHADRESH SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13266 of 2003

MR AMIT M PANCHAL for Petitioner No. 1

MR DA DESAI, Ld. AGP for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3-4

1. Special Civil Application No. 13667 of 2003

MR EE SAIYED for Petitioner

MR PREMAL JOSHI, Ld. AGP for Respondents

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 24/09/2003

COMMON ORAL JUDGEMENT

1. Rule. Mr.Desai, learned AGP waived service of rule on behalf of the respondent of SCA No.13266/2003 and Mr.Joshi, learned AGP waived service of rule on behalf of the respondents of SCA No.13667/2003. With the consent of the parties the matters are taken up for final hearing today.

2. The question arises for consideration of the Court is whether the extra meritorious students who have passed examinations of 12th Standard from the School outside our Country or from other States of our Country can be considered for the purpose of giving admission to professional courses in this State after 12th Standard in view of the Rules framed by the Government for admission through Joint Admission Committee as per the Government Resolution dated 6-5-2003.

3. The short facts of the case appears to be that the petitioner of SCA No.13266/2003 passed 10th Standard Examinations from Secondary Education Board of Gujarat State and secured 83.14%. There is no dispute on the point that the said petitioner is of Indian Origin. It is the case of the petitioner that he had thereafter to go to the United States of America (USA) and in USA he has undergone studies of 11th and 12th Standards. The petitioner has successfully passed 11th and 12th Standards from the concerned High Schools in USA and the gradation given by the concerned High Schools is produced on record at page 21 of the petition. It is further the case of the petitioner that since the petitioner was desirous to study after 12th Standard in our Country, he had approached the Counsellor (Education), Education Department working at Embassy of India in Washington D.C., USA and ultimately as per the certificate dated 16-7-2003 it is certified to the effect by the Counsellor of Education Department that the examinations passed by the petitioner is equivalent to 12 year Senior Secondary Board Examination Certificate of India and it is also certified that the petitioner is eligible for admission to Bachelor's Degree course in Arts, Science, Medicine and Engineering in India. It is further the case of the petitioner that the provisional eligibility certificate is also granted by the Gujarat University as per the certificate dated 24-7-2003 and the petitioner was to get admission in NHL Municipality College, but when the petitioner wanted to apply for admission through Joint Admission Committee he has been denied the consideration and, therefore, under these circumstances the present petition. It is further the case of the petitioner that

the petitioner has secured 93% of the marks in the subjects of Electronics and Communication Engineering in the 12th Standard Examinations in USA and, therefore, on merits, in any case, the petitioner may be considered for admission in management quota.

4. So far as the petitioner of SCA No.13667/2003 is concerned, it is the case of the petitioner that she had also passed the 10th Standard Examinations from Secondary Education Board of Gujarat State and she had passed the said examinations with distinction of 88.71%. However, it is further the case of the petitioner that because of the earth-quake the house was collapsed and on account of the family circumstances, the petitioner had to migrate to Tamil Nadu and at that place the petitioner continued with further studies and the petitioner has secured 93% of marks in aggregate and 94% of marks in Science subjects in the 12th Standard Examinations from Higher Secondary Board, Tamil Nadu. It is the case of the petitioner that such 12th Standard Examinations conducted by the Higher Secondary Board of Tamil Nadu is equivalent to H.S.C. Board Examinations of Gujarat State and, therefore, it has been submitted that now since the petitioner is originally from Gujarat, she wants to study further after 12th Standard in Gujarat and, therefore, the petitioner filled up the form for admission through Joint Admission Committee, but it is the case of the petitioner that she has been denied consideration on account of passing of her examinations of 12th Standard from Tamil Nadu and, therefore, she has preferred this petition. Mr.Saiyed, learned Counsel, submitted that though the prayer is made in the petition for directing the respondents to accommodate the petitioner for giving admission in Medical Stream, the petitioner may also be permitted to make such prayer in any other professional courses, may be Engineering or other courses in Gujarat State, if the Court finds that the petitioner may not be entitled to get admission in Medical Stream. Such request of the petitioner is granted.

5. Mr.Panchal, learned Counsel appearing for the petitioner in SCA No.13266/2003, contended, inter alia, that merely because the rules are framed by the Government, it cannot be said that the petitioner's qualification of 12th Standard is not equivalent to 12th Standard of this State or C.B.S.E., which is the qualifying the examination as per the rules. He also submitted that the Education Department of the Government of India has certified for such equivalence and it should be respected by the State Government and the petitioner should be considered for the purpose of admission.

Mr.Panchal also submitted that once the examination is equivalent and when the Education Department of the Government of India has also certified for eligibility, it is not open to the Joint Admission Committee to deny the consideration to the petitioner, more particularly when even the Gujarat University has also granted provisional eligibility. Mr.Panchal relied upon the regulations framed by All India Council for Technical Education (AICTE) dated 24-4-2002 for contending that the students who are either foreign nationals or the persons of Indian origin are given special treatment for the purpose of admission on NRI quota or even on Supernumerary seats which would be normally in excess of the number of intake capacity of a particular college or institution. He also submitted that so far as the petitioner is concerned, in any case, he can be said to be NRI even as per the definition of NRI in this regulations and, therefore, when AICTE has already provided for special arrangement to such students, there is no reason on the part of the Joint Admission Committee to decline the consideration to the petitioner for admission to Engineering Course or other technical education in Gujarat State. Mr.Panchal has also relied upon certain observations of the Apex Court in the case of "Gujarat University and Anr. v. Shri Krishna Ranganath Mudholkar and Ors." reported in AIR 1963 SC, 703 for contending that when the Government of India has certified for eligibility and equivalence, it should be respected by the State Government. Mr.Panchal has also relied upon the judgement of the Apex Court in the case of "TMA Pai Foundation and others vs. State of Karnataka and Others" reported in 2002(8) SCC, 481 at para 393 for contending that it cannot be said that in view of the decision of "TMA Pai Foundation" (supra) other enactment providing for other arrangement would not operate further and, therefore, in the submission of Mr.Panchal, in view of the certification by the Education Department of the Government of India read with the Regulations by AICTE, the petitioner can be considered for the purpose of admission.

6. On behalf of the Joint Admission Committee, Mr.Desai, learned AGP has placed reliance upon the rules framed by the State Government for the purpose of admission to professional courses after 12th Standard. Mr.Desai submitted that for getting admission the student concerned should fulfill the eligibility criteria as provided under Rule 4 and he submitted that as per Rule 20 after the process of admission is over and if any seat is left, then only the student, who has passed from outside State or Country can be considered for such

purpose and, therefore, he submitted that when the petitioner of SCA No.13266/2003 has not passed the 12th Standard as per the eligibility criteria provided under Rule 4(1) or H.S.C. or C.B.S.E. Examinations from any of the Schools in Gujarat, the Joint Admission Committee cannot be compelled to consider the admission of the petitioner for the present. Mr.Desai also submitted that even if this Court is to find that the extra meritorious students should be considered for admission, in any case, on the management quota, then also for such purpose, a reference may be made as per Rule 23 to the State Government for making relaxation in extraordinary circumstances and, therefore, Mr.Desai submitted that this Court of its own may not relax the Rules of eligibility which are provided by the State Government.

7. In reply to the petition of SCA No.13667/2003, Mr.Joshi learned AGP submitted, inter alia, that the petitioner had initially prayed for admission to MBBS in medical faculty and it is an admitted position that the petitioner has passed the 12th Standard examinations outside Gujarat. Since for the students who have passed 12th Standard Examinations outside Gujarat but within Country, there is already reservations of 15% on all-India basis through pre-medical test and hence such students cannot be considered. He submitted that this Court in the case of "Dharambir J.W.O. vs. State of Gujarat" in SCA No.12612/2003 as per the decision dated 8-9-2003 has rejected such prayer made by the student who had passed the examinations outside Gujarat and, therefore, he submitted that in any case, the petitioner cannot be considered for the purpose of admission to medical faculty. So far as the admission to Engineering is concerned, Mr.Joshi has also relied upon the Admission Rules which provide for the eligibility criteria as per Rule 4 read with Rule 20 of such Rules.

8. If the Rules are read as it is, Rule 4, inter alia, provides that students should have passed the 12th Standard Examinations of H.S.C. or C.B.S.E. from any School situated in Gujarat and it is only for the parents of such students who have been transferred to Gujarat and such students have passed the examinations outside Gujarat, their cases would be considered in central quota as per Rule 5.2, or otherwise the students as per the Rules should fulfill the eligibility criteria as provided under Rule 4.1. This Court had an occasion to consider the incidental issues in the case of "Zalakben Sudhirbhai Upadhyay vs. Joint Admission Committee for Professional Courses & Anr." in SCA No.10841/2003 which has been decided as per the judgement dated 6-9-2003. After

considering the eligibility criteria as provided under Rule 4 read with Rule 5.5.2, it was observed by the Court that since the petitioner has also passed 12th Standard C.B.S.E. examination and she has secured 92% at 12th Standard C.B.S.E. examination, which is the qualifying examination for considering the merit of the students in Gujarat State also, can be considered for giving admission in management quota. Mr.Panchal has relied upon the said judgement of this Court. However, the distinguishing feature is that in the said matter the student did pass the examinations of 12th Standard CBSE which admittedly as per the Rules is also the qualifying examination for the students of Gujarat.

9. However, there is a considerably force in the contention raised by Mr.Panchal as well as Mr.Saiyed on behalf of the petitioners that if extra meritorious students are desirous to study in Gujarat State for further education, may be a student who has passed equivalent 12th Standard examinations from the school outside the Country or may be from a school outside Gujarat State, then there should not be any absolute bar operating for such students to get admission in any of the professional courses in Gujarat State. It is true that as per Rule 20 such students can be considered only after the vacancy is there and after completion of the admission process and the vacancy is left unfilled thereafter and, therefore, it can be said that to some extent the room is provided for accommodation of such students in Gujarat State also. But such is fully dependent upon the contingencies that the vacancy is available after the admission process is over by the Admission Committee. As per the decision of the Apex Court in the case of "TMA Pai Foundation"(supra) as well as in the case of "Islamic Academy of Education and Anr. v. State of Karnataka and Ors.", reported in JT 2003(7) SC, 1, so far as the management quota is concerned, the Apex Court has provided for competitive examination to be held by the Association of the Managements under the control and supervision of the Committee which may be constituted under the Chairmanship of a retired Judge of the High Court. However, in view of the order passed by this Court in SCA No.9800/2003 dated 28-29/8-2003, for the academic year 2003-04 for the management quota it is directed that the admission shall be granted as per the merit list prepared by Joint Admission Committee, and at the same time, without scarifying the merit a preference can be given by the management for admitting the students having equal merits. Therefore, it may be that for the academic year 2004-05, when the examinations will be conducted for management quota, the position may be

different, but for the present year i.e.2003-04, since the admission are to be governed by the rules as per the process undertaken by the Joint Admission Committee, the matter is to be examined accordingly.

10. Prima facie, it appears that if the Government of India has certified for eligibility and for equivalence, the same would carry higher weightage, because such is also the view and the decision by the expert body in the field of education at the Government of India level. Similarly the 12th Standard Examinations in the other States cannot be totally ignored for the purpose of comparing merits of the students for getting admission after the 12th Standard. However, the jurisdiction of this Court while exercising power under Article 226 is limited and normally the Court would not substitute its wisdom in place of the wisdom of the academicians and for such matter the Court would leave it for the Universities and the academicians to decide unless it creates absurdity on the face of it or it creates absurd results on account of the same. Therefore, whether 12th Standard examinations passed by the students outside our Country or outside Gujarat State can be treated at 100% par with the 12th Standard HSC or CBSE of Gujarat State or not will have to be examined by the proper authority of the State Government and, therefore, it would be a case for directing the concerned authority of the State Government to interpret the Rules and, if required, to make relaxation for such purpose. Normally, in a matter where students of the equal merits are available of Gujarat State, one may consider the matter for giving preference to such students, but in a case where the students having extraordinary merits or much higher distinguishing merit in comparison to the percentage obtained by the students of Gujarat State, the approach on the part of the academicians would be to attract and provide opportunity to such extraordinary meritorious students who are desirous to study in the State, which may ultimately result into a contribution to the society in future. The observations made by this Court in earlier para are to be construed in the manner or in case of extraordinary meritorious students and not, in general, to deprive of the students of Gujarat State for admission in the State itself in such colleges which are situated in Gujarat.

11. If the aforesaid observations are taken into consideration, it prima facie appears that the petitioner has secured 93% of marks in the Science subjects of Computer, Health, Introduction of Technology and other special Science subjects, where the gradation given is "A" and as per the grading scale mentioned at the bottom

of the certificate it is between 93% to 100% or in any case, above 90% so far as the petitioner of SCA No.13266/2003 is concerned. So far as the petitioner of SCA No.13667/2003 is concerned, she has also secured 94% marks in the Science subjects and 93% on average marking. Normally the student who secures above 90% in the curricular activities can be said to be a student having extra ordinary merits. Hence, I find it proper to direct the Secretary of the Education Department of the State Government to consider the matter marking some room to such extraordinary meritorious students, more particularly those students who secure above 90% in qualifying examinations for considering their case for admission in the management quota, subject to fulfilling all other necessary requirements or undergoing necessary procedure.

12. In view of the aforesaid observations and discussions, I am of the view that the following directions shall meet with the ends of justice:

12.1. The Secretary of the Education Department of the State Government shall consider the merits, equivalence and eligibility of the petitioners of SCA No.13266/2003 and SCA No.13667/2003 for considering them for admission to the professional courses in Engineering or other such professional courses (other than medical faculty) and such exercise may be undertaken by the Secretary himself or any other officer which he may find it proper and the decision shall be rendered by the Secretary of Education Department.

12.2. The aforesaid exercise shall be completed within 15 days from the date of receipt of the order of this Court. The Secretary of the Education Department or any other Officer, who is nominated or authorized by the Secretary for such purpose may preferably give hearing to such students, so that the students or their representatives may render assistance to Secretary/such Officer in deciding the equivalence, eligibility and the merit of such students.

12.3 The decision which shall be rendered, will be considered by the State Government and necessary orders, if required, shall be passed by the

competent authority of State Government keeping in view the scope and ambit of Rule 23 of the Rules for admission framed by the State Government for admission through Joint Admission Committee.

13. Both the petitions are allowed to the aforesaid extent. Rule made absolute to the aforesaid extent. No cost. Direct service is permitted.

24-9-2003 (Jayant Patel, J.)

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